

STEVEN BENITO RUSSO, SBN 104858
Chief of Enforcement
WILLIAM J. LENKEIT, SBN 90394
Commission Counsel
FAIR POLITICAL PRACTICES COMMISSION
428 J Street, Suite 620
Sacramento, CA 95814
Telephone: (916) 322-5660
Facsimile: (916) 322-1932

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY SACRAMENTO

FAIR POLITICAL PRACTICES COMMISSION,)	Case No.
a state agency,)	
Plaintiff,)	COMPLAINT FOR CIVIL
v.)	PENALTIES UNDER THE
)	POLITICAL REFORM ACT OF 1974,
)	AS AMENDED
SAN FRANCISCANS AGAINST THE BLANK)	(Government Code §§ 91001(b) and
CHECK — NO ON MEASURE D COMMITTEE)	91004)
SPONSORED BY PG&E, JAMES R. SUTTON,)	
and PG&E CORPORATION,)	UNLIMITED CIVIL ACTION
Defendants.)	

Plaintiff FAIR POLITICAL PRACTICES COMMISSION, a state agency, alleges as follows:

1. Plaintiff brings this action in the public interest to enforce the provisions of the Political Reform Act of 1974. (Government Code sections 81000 through 91014.)

JURISDICTION AND VENUE

2. This court has original jurisdiction over this matter. As the first and second causes of action in this matter occurred in connection with campaign statements and reports that should have been filed by Defendant PG&E with the Office of the California Secretary of State, located in the County of Sacramento, and the third cause of action is factually related to the other two, the County of Sacramento is the proper venue for this action, pursuant to Code of Civil Procedure section 393.

//

1 **PARTIES**

2 **PLAINTIFF FAIR POLITICAL PRACTICES COMMISSION**

3 3. Plaintiff Fair Political Practices Commission (the “Commission”) is a state agency
4 created by the Political Reform Act of 1974 (the “Act”). Plaintiff Commission has primary
5 responsibility for the impartial, effective administration and implementation of the Act. (Gov. Code §
6 83111.) Pursuant to Government Code section 91001, subdivision (b), Plaintiff Commission is the civil
7 prosecutor for matters involving state committees and state election campaigns, and is authorized to
8 maintain this action under Government Code sections 91001, subdivision (b), 91004, 91005, and
9 91005.5. Additionally, the Commission may act as the civil prosecutor with respect to a local ballot
10 measure committee pursuant to Government Code section 91001, subdivision (b) upon written
11 authorization from the district attorney. The Commission has received written authorization from the
12 District Attorney for the City and County of San Francisco to bring and resolve this civil action against
13 Defendants San Franciscans Against the Blank Check — No On Measure D Committee Sponsored by
14 PG&E and Sutton by letter dated July 29, 2003.

15 **DEFENDANT PG&E CORPORATION**

16 4. Defendant PG&E Corporation and its affiliated entities and subsidiaries (the “PG&E
17 Corporation”) was, at all times relevant to this matter, a committee as defined in Government Code
18 section 82013, subdivision (c). This type of committee is commonly referred to as a “major donor”
19 committee.

20 **DEFENDANT SAN FRANCISCANS AGAINST THE BLANK CHECK — NO ON MEASURE D**
21 **COMMITTEE SPONSORED BY PG&E**

22 5. Defendant San Franciscans Against the Blank Check — No On Measure D Committee
23 Sponsored by PG&E (the “Blank Check Committee”) was, at all times relevant to this matter, a recipient
24 committee as defined in Government Code section 82013, subdivision (a). Defendant Blank Check
25 Committee was also a primarily formed committee, as defined in section 82013, subdivision (a), as it
26 was formed primarily to oppose Proposition D on the November 5, 2002 general election ballot for the
27 City and County of San Francisco.

28 //

1 DEFENDANT JAMES R. SUTTON

2 6. At all times relevant to this matter, Defendant James R. Sutton (“Sutton”) was a partner
3 in the law firm of Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP (“Nielsen Merksamer”), and
4 served as the treasurer of Defendant Blank Check Committee.

5 **CAMPAIGN REPORTING REQUIREMENTS**

6 7. An express purpose of the Act, as set forth in Government Code section 81002,
7 subdivision (a), is to ensure that the contributions and expenditures affecting election campaigns are
8 fully and truthfully disclosed to the public, so that voters may be better informed, and so that improper
9 practices will be inhibited.

10 8. In furtherance of this purpose of disclosure, the Act sets forth a comprehensive campaign
11 reporting system, designed to disclose to the public, in a timely manner, the election activities of
12 California political candidates and committees. (Gov. Code § 84200 et seq.)

13 **CIVIL LIABILITY**

14 9. Government Code section 91004 provides that any person who intentionally or
15 negligently violates any of the reporting requirements of the Act shall be liable in a civil action for an
16 amount up to the amount(s) not properly reported. Persons that violate Government Code sections
17 84203 and 84605 are liable in a civil action pursuant to Government Code section 91004.

18 10. Pursuant to Government Code sections 81004, subdivision (b) and 84100, as
19 implemented by title 2, California Code of Regulations, section 18427, subdivision (a), it is the duty of
20 a committee’s treasurer to ensure that the committee complies with all of the requirements of the Act
21 concerning the receipt and expenditure of funds, and the reporting of such funds. A committee’s
22 treasurer may be held jointly and severally liable, along with the committee, for any reporting
23 violations committed by the committee. (Gov. Code § 91006.)

24 **FIRST CAUSE OF ACTION**

25 (TWO VIOLATIONS – FAILURE TO TIMELY DISCLOSE LATE CONTRIBUTIONS)

26 11. Plaintiff re-alleges, and incorporates herein, paragraphs 1 through 10, as though set forth
27 at length.

1 12. Pursuant to Government Code section 84203, when a major donor committee makes a
2 late contribution, the committee must file a late contribution report with the Office of the Secretary of
3 State, disclosing the contribution within 24 hours.

4 13. Government Code section 82036 defines a “late contribution” as a contribution
5 aggregating \$1,000 or more that is made before an election, but after the closing date of the last pre-
6 election campaign statement that is required to be filed.

7 14. Under Government Code sections 82036 and 84200.7, the late contribution period prior
8 to an election is the last 16 days before the election.

9 15. The late contribution reporting period for the City and County of San Francisco
10 November 5, 2002 general election was October 21, 2002 through November 5, 2002.

11 FAILURE BY DEFENDANT PG&E CORPORATION TO TIMELY DISCLOSE A LATE
12 CONTRIBUTION IN A LATE CONTRUBTION REPORT BY OCTOBER 24, 2002

13 16. On October 23, 2002, Defendant PG&E Corporation made a \$500,000 late contribution
14 to Defendant Blank Check Committee, to oppose Proposition D in the November 5, 2002 general
15 election.

16 17. After making the late contribution, Defendant PG&E Corporation had a duty to file a late
17 contribution report disclosing the October 23, 2002 late contribution no later than October 24, 2002.

18 18. Defendant PG&E Corporation expressly relied on Defendant Sutton and staff at Nielsen
19 Merksamer to prepare and timely file any late contribution reports that were due, but Sutton and Nielsen
20 Merksamer failed to file a late contribution report disclosing the October 23, 2002 contribution by the
21 October 24, 2002 due date.

22 19. By negligently failing to file a late contribution report disclosing the \$500,000 late
23 contribution by the October 24, 2002 due date, Defendant PG&E Corporation violated Government
24 Code section 84203.

25 //

26 //

27 //

1 FAILURE BY DEFENDANT PG&E CORPORATION TO TIMELY DISCLOSE A LATE
2 CONTRIBUTION IN A LATE CONTRUBTION REPORT BY OCTOBER 26, 2002

3 20. On October 25, 2002, Defendant PG&E Corporation made a \$300,000 late contribution
4 to Defendant Blank Check Committee, to oppose Proposition D in the November 5, 2002 general
5 election.

6 21. After making the late contribution, Defendant PG&E Corporation had a duty to file a late
7 contribution report disclosing the October 25, 2002 late contribution no later than October 26, 2002.

8 22. Defendant PG&E Corporation expressly relied on Defendant Sutton and staff at Nielsen
9 Merksamer to prepare and timely file any late contribution reports that were due, but Sutton and Nielsen
10 Merksamer failed to file a late contribution report disclosing the October 25, 2002 contribution by the
11 October 26, 2002 due date.

12 23. By negligently failing to file a late contribution report disclosing the \$300,000 late
13 contribution by the October 26, 2002 due date, Defendant PG&E Corporation violated Government
14 Code section 84203.

15 **SECOND CAUSE OF ACTION**

16 (TWO VIOLATIONS - FAILURE TO TIMELY FILE REPORTS ELECTRONICALLY)

17 24. Plaintiff re-alleges, and incorporates herein, paragraphs 1 through 10, 11 through 17, and
18 20 through 21, as though set forth at length.

19 25. Government Code section 84605, subdivision (a) requires any major donor committee,
20 that makes contributions totaling fifty thousand dollars (\$50,000) or more in a calendar year, to file its
21 campaign statements and reports online or electronically with the Secretary of State, beginning July 1,
22 2000.

23 26. In 2002, Defendant PG&E Corporation made contributions in excess of fifty thousand
24 dollars, and thereafter had a duty to file its campaign statements electronically with the Office of the
25 Secretary of State, in addition to filing the statements in a paper format.

26 //

27 //

1 FAILURE BY DEFENDANT PG&E CORPORATION TO ELECTRONICALLY FILE A LATE
2 CONTRIBUTION REPORT BY OCTOBER 24, 2002

3 27. As described in the First Cause of Action, at paragraphs 12 through 17, Defendant PG&E
4 Corporation had a duty to disclose its \$500,000 late contribution, made on October 23, 2002, to
5 Defendant Blank Check Committee, in a properly filed late contribution report, by October 24, 2002.

6 28. Defendant PG&E Corporation expressly relied on Defendant Sutton and staff at Nielsen
7 Merksamer to prepare and timely electronically file any late contribution reports that were due, but
8 Sutton and Nielsen Merksamer failed to electronically file a late contribution report disclosing its
9 \$500,000 late contribution, made on October 23, 2002, to Defendant Blank Check Committee, in a
10 properly filed late contribution report, by the October 24, 2002 due date.

11 29. By negligently failing to electronically file a late contribution report by October 24, 2002,
12 disclosing the \$500,000 late contribution made on October 23, 2002, Defendant PG&E Corporation
13 violated Government Code section 84605, subdivision (a).

14 FAILURE BY DEFENDANT PG&E CORPORATION TO ELECTRONICALLY FILE A LATE
15 CONTRIBUTION REPORT BY OCTOBER 26, 2002

16 30. As described in the First Cause of Action, at paragraphs 12 through 15 and 20 through
17 21, Defendant PG&E Corporation had a duty to disclose its \$300,000 late contribution, made on October
18 25, 2002, to Defendant Blank Check Committee, in a properly filed late contribution report, by October
19 26, 2002.

20 31. Defendant PG&E Corporation expressly relied on Defendant Sutton and staff at Nielsen
21 Merksamer to prepare and timely electronically file any late contribution reports that were due, but
22 Sutton and Nielsen Merksamer failed to electronically file a late contribution report disclosing its
23 \$300,000 late contribution, made on October 25, 2002, to Defendant Blank Check Committee, in a
24 properly filed late contribution report, by the October 26, 2002 due date.

25 32. By negligently failing to electronically file a late contribution report by October 26, 2002,
26 disclosing the \$300,000 late contribution made on October 25, 2002, Defendant PG&E Corporation
27 violated Government Code section 84605, subdivision (a).

1 **THIRD CAUSE OF ACTION**

2 (TWO VIOLATIONS – FAILURE TO TIMELY DISCLOSE LATE CONTRIBUTIONS)

3 33. Plaintiff re-alleges, and incorporates herein, paragraphs 1 through 10, as though set forth
4 at length.

5 34. Pursuant to Government Code section 84203, subdivision (a), when a recipient
6 committee receives a late contribution, the committee must file a late contribution report disclosing the
7 contribution within 24 hours.

8 35. Government Code section 82036 defines a “late contribution” as a contribution
9 aggregating \$1,000 or more that is received before an election, but after the closing date of the last pre-
10 election campaign statement that is required to be filed.

11 36. Under Government Code sections 82036 and 84200.7, the late contribution period prior
12 to an election is the last 16 days before the election.

13 37. The late contribution reporting period for the City and County of San Francisco
14 November 5, 2002 general election was October 21, 2002 through November 5, 2002.

15 38. When a recipient committee is formed or existing primarily to support or oppose a single
16 measure to be voted on in one city, section 84215, subdivision (e) requires that the committee’s
17 campaign statements shall be filed with the clerk of the city.

18 **FAILURE BY DEFENDANTS BLANK CHECK COMMITTEE AND SUTTON TO TIMELY**
19 **DISCLOSE A LATE CONTRIBUTION IN A LATE CONTRIBUTION REPORT BY**
20 **OCTOBER 24, 2002**

21 39. On October 23, 2002, Defendant Blank Check Committee received a \$500,000 late
22 contribution from Defendant PG&E Corporation to oppose Proposition D in the November 5, 2002
23 general election.

24 40. After receiving the late contribution, Defendants Blank Check Committee and Sutton had
25 a duty to file a late contribution report with the city clerk of the City and County of San Francisco
26 disclosing the October 23, 2002 late contribution no later than October 24, 2002.

27 41. Defendant Blank Check Committee expressly relied on Defendant Sutton and staff at
28 Nielsen Merksamer to prepare and timely file any late contribution reports that were due, but Sutton and

1 Nielsen Merksamer failed to file a late contribution report disclosing the October 23, 2002 late
2 contribution by the October 24, 2002 due date.

3 42. By negligently failing to file a late contribution report disclosing the \$500,000 late
4 contribution by the October 24, 2002 due date, Defendants Blank Check Committee and Sutton violated
5 Government Code section 84203.

6 FAILURE BY DEFENDANTS BLANK CHECK COMMITTEE AND SUTTON TO TIMELY
7 DISCLOSE A LATE CONTRIBUTION IN A LATE CONTRIBUTION REPORT BY
8 OCTOBER 26, 2002

9 43. On October 25, 2002, Defendant Blank Check Committee received a \$300,000 late
10 contribution from Defendant PG&E Corporation to oppose Proposition D in the November 5, 2002
11 general election.

12 44. After receiving the late contribution, Defendants Blank Check Committee and Sutton had
13 a duty to file a late contribution report with the city clerk of the City and County of San Francisco
14 disclosing the October 25, 2002 late contribution no later than October 26, 2002.

15 45. Defendant Blank Check Committee expressly relied on Defendant Sutton and staff at
16 Nielsen Merksamer to prepare and timely file any late contribution reports that were due, but Sutton and
17 Nielsen Merksamer failed to file a late contribution report disclosing the October 25, 2002 late
18 contribution by the October 26, 2002 due date.

19 46. By negligently failing to file a late contribution report disclosing the \$300,000 late
20 contribution by the October 26, 2002 due date, Defendants Blank Check Committee and Sutton violated
21 Government Code section 84203.

22
23 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

24 1. With respect to the first and second causes of action, for statutory penalties against
25 Defendant PG& E Corporation, payable to the "General Fund of the State of California," according to
26 proof, in an amount up to the amount not properly reported, as permitted by Government Code section
27 91004.

1 2. With respect to the third cause of action, for statutory penalties against Defendant San
2 Franciscans Against the Blank Check — No On Measure D Committee Sponsored by PG&E and
3 Defendant Sutton, both jointly and severally, payable to the “General Fund of the State of California,”
4 according to proof, in an amount up to the amount not properly reported, as permitted by Government
5 Code section 91004.

6 3. For such other and further relief as the Court may deem proper.
7

8 Dated: May 10, 2004

FAIR POLITICAL PRACTICES COMMISSIO

9 STEVEN BENITO RUSSO
10 Chief of Enforcement
11 WILLIAM J. LENKEIT
Commission Counsel

12 By:

13 William J. Lenkeit
14 Attorney for Plaintiff
Fair Political Practices Commission
15
16
17
18
19
20
21
22
23
24
25
26
27
28